

IN THE MATTER OF:

STATE OF CONNECTICUT, JUDICIAL BRANCH : CASE NO. SE-29,409
-and-
UNITED PUBLIC SERVICE EMPLOYEES UNION :
-and-
AFT/AFT-CT, AFL-CIO, JUDICIAL PROFESSIONAL
EMPLOYEES :
-and-
AFT, AMERICAN FEDERATION OF TEACHERS,
AFL-CIO : APRIL 16, 2012 .

**BRIEF OF AFT/AFT-CT, AFL-CIO,
JUDICIAL PROFESSIONAL EMPLOYEES**

I. STATEMENT OF PROCEEDINGS:

The Judicial Professional Employees, AFT/AFT-Connecticut, AFL-CIO (hereinafter "the Union") and the State of Connecticut Judicial Department (hereinafter "Judicial") are parties to a Collective Bargaining Agreement which has been in full force and effect at all relevant times.

On or about August 30, 2011, the United Public Service Employees Union (hereinafter "UPSEU") filed a representation petition with the State Board of Labor Relations (hereinafter "SBLR"). That petition claiming that a requisite number of judicial professional employees chose UPSEU to be their collective bargaining representative was filed with the SBLR on August 31, 2011. (Exhibit 3)



The Union objected to the petition at a petition conference. Specifically, the Union alleged that pursuant to C.G.S. §275 UPSEU does not have statutory authority to represent state employees. This statute states in relevant part that, "*No employee organization shall be eligible to petition for, or participate in a recognition and election until it has been in existence in state employment for at least six months.*" The Union also objected to the petition because a new Collective Bargaining Agreement had been ratified by the Union membership and approved by the State Legislature. (Exhibits 23, 24, 25, 26, 27 and 33) This new Collective Bargaining Agreement between the Union and the Judicial Department was executed and ratified prior to UPSEU filing the representation. (Exhibit 33)

A conference held on this matter before Board Agent Catherine Foley and Assistant Board Agent Jose Santana determined that the matter could not be resolved at the scheduled pre-conference hearing. The SBLR consolidated the instant case with numerous other representation cases filed by UPSEU and the Department of Correctional Employees Union. Those Unions also objected to representation petitions. Formal hearings on all the consolidated cases were held on December 19, 2011, January 11, 2012, February 9, 2012, and February 15, 2012. At these hearings all parties had the opportunity to offer evidence, and examine and cross-examine witnesses. Post-hearing briefs are due no later than April 2, 2012 and reply briefs are to be filed no later than April 14, 2012.



II. FACTS:

The hearings in this matter are the results of a representation petition filed by UPSEU on or about August 30, 2011. The Union objected to the filing of the petition claiming it was untimely and further, that pursuant to Connecticut General Statute §5-275, UPSEU did not have prerequisite experience and therefore the standing to represent a state employees' bargaining unit.

The State Employees' Bargaining Agent Coalition (hereinafter "SEBAC") is a statutorily created coalition responsible for negotiating insurance or pension issues with the State of Connecticut. SEBAC is made up of representatives of all fifteen State employee bargaining units, which represent forty-five thousand State employees. SEBAC and the State of Connecticut have an agreement regarding health insurance and pensions that does not expire until 2017; this agreement was negotiated with the prior administration. In early 2011, the Malloy administration asked to negotiate SEBAC pension and health insurance because the State anticipated a \$7 billion dollar budget deficit; he requested that SEBAC make changes in health insurance and pension in order to reduce the deficit. (Tx. P. 283, 284) The administration stated that without a new SEBAC agreement there could be between 7,000 and 9,000 state employees laid off, as well as changes in the state by-laws regarding collective bargaining for state employees. (Tx. P. 283, 284)



According to Daniel Livingston, the Chief Negotiator for SEBAC an agreement was reached in May of 2011. The SEBAC representatives, i.e., the individual Union leadership which forms the SEBAC Coalition, voted on whether to accept or reject a SEBAC agreement.

In May 2011, pursuant to SEBAC by-laws, a vote was taken regarding the SEBAC agreement. While the majority of the SEBAC membership voted in favor of that first agreement, pursuant to the SEBAC by-laws there was not a sufficient number of votes to approve the changes. Eleven of the represented Unions voted in favor of the agreement with the State and four did not, which was sufficient to prevent the agreement's ratification by SEBAC leadership.

(Tx. P. 235-237)

According to Chief Negotiator Livingston, subsequent to the May of 2011 vote the State and SEBAC revised the agreement. The second SEBAC agreement (hereinafter "SEBAC 2011") was voted on in August 2011. (Tx. P. 238-245). In addition to the SEBAC agreement, each constituent Union negotiated changes with its respective employer in its Collective Bargaining Agreement, essentially negotiating a successor Collective Bargaining Agreement. In the instant case the new individual unit agreement expires in 2016 (Exhibit 33), according to the agreement executed by the employer and by the Union on August 22, 2011.

Prior to the execution of Exhibit 33, there was a ratification vote by the Union's membership regarding the revised, or second, SEBAC agreement, as well as the new unit



collective bargaining agreement (Exhibit 33). According to Union President John Satti, the vote took place on August 16th and prior to that the membership had the opportunity to review the SEBAC agreement, as well as the Union's individual unit agreement. Satti testified that he did not recall anyone expressing concern about the new 2011 to 2016 duration clause. (Tx. P. 485-501) Subsequent to the votes of the Union and the SEBAC constituent Unions, SEBAC Chief Negotiator Livingston, Director of Labor Relations Linda Yelmini (hereafter "Yelmini"), and the State's Chief Negotiator certified to the General Assembly that the SEBAC leadership approved an agreement and forwarded said agreement to the General Assembly, along with the agreements of the individual Union bargaining unit and the other Unions. (Exhibit 24) Consistent with General Assembly Rules, Yelmini forwarded the SEBAC agreement and the individual bargaining unit agreements to the Clerks of the Senate and the House of Representatives. (Exhibits 27 & 28) She also provided the General Assembly with a supercedence appendix (Exhibit 25), as well as a cost estimate of the SEBAC 2011 agreement (Exhibit 26). The SEBAC 2011 agreement and the individual unit agreements were not voted upon by the General Assembly and, therefore, the contract was ratified by operation of law.

Connecticut General Statute §5-275 states in relevant part, "*No employer organization will be eligible to petition for or participate in a recognition and election until it has been in existence as state employment for at least six months.*" At the hearings UPSEU offered no



evidence or testimony that it has been in existence in state employment for six months prior to filing the petition. UPSEU does not, and has never represented state employees for any matters regarding wages, hours and working conditions. (Tx, P. 98) In the instant case no evidence was offered into the record that allows the SBLR to determine that UPSEU can statutorily represent state employees.

The Union membership voted affirmatively on August 16th to approve the SEBAC 2011 agreement, as well as a new unit agreement between the Union and the employer. (Tx. P. 500, 501) That agreement voted by the membership on August 16th contained various changes to wages, hours and working conditions and a new contract expiration date of June 30, 2016. (Exhibit 33) It was after the negotiated agreement between the Union and the employer was ratified by the Union's membership, that UPSEU filed a petition with the State Board of Labor Relations on or about August 30, 2011. (Exhibit 2)

C.G.S. §5-275 states that, "*No election may be redirected by the Board during the term of a written collective bargaining agreement, except for good cause*"; this is commonly called the contract bar rule. In the instant case, this petition was filed during the first year of the new collective bargaining agreement between the Union and the employer, with an expiration date in 2016.



Attachment H is part of the SEBAC 2011 agreement the Statute sent to the Connecticut General Assembly, which was approved by the General Assembly through non-action. It states in relevant part, "*Effective on and after July 1, 2011, the contract bar for purposes for any constituent Union of SEBAC accepting the contract extension or renewal in accordance with Appendix A of this agreement shall be computed solely from the expiration of any such extension or renewal.*" This Attachment, as with other sections of the SEBAC Agreement, was approved by both the SEBAC leadership and the Connecticut General Assembly.

III. ISSUES:

1. *UPSEU did not have the statutory standing to be the exclusive bargaining agent for state employees.*
2. *UPSEU did not file a timely petition when it filed the petition on August 30, 2011 to represent Judicial Professional Employees.*
3. *The fact that Attachment H was not reviewed prior to the Union vote is irrelevant.*

IV. ARGUMENT 1:

UPSEU is statutorily prevented from representing state employees. At the instant hearing the Union objected to UPSEU's petition based on Connecticut General Statute §5-275. This statute entitled, *Employee Organization Designated as Exclusive Bargaining Representative. Bargaining Unit Determination. Petition Seeking Clarification or Modification of Existing Units* states in relevant part, "*No employer organization shall be eligible to petition for or*



participate in a recognition election until it has been in existence in state employment for at least six months.” At the instant hearing UPSEU offered UPSEU Regional Director Ronald Suraci’s testimony that UPSEU solicited cards from state employees in 2005 (Tr. P. 82); the petition was filed and dismissed by the State Board of Labor Relations. (Tr. P. 83; Exhibit 20) Exhibit 20 is a recommendation for dismissal, prepared by Assistant Board Agent Kenneth Hampton. One of the justifications for Hampton’s recommended dismissal was pursuant to §5-278. Specifically, Hampton found that UPSEU was *not in existence in state employment for at least six months.* According to Suraci, in 2008 UPSEU collected judicial employees’ intent cards, but did not have enough cards to file a petition. (Tr. P. 88, 90) More importantly, Suraci went on to testify that UPSEU does not and has never represented state employees. (Tr. P. 90)

Suraci testified further that UPSEU does not and has never represented state employees for any matters of wages, hours and working conditions. (Tr. P. 98) Suraci stated that his UPSEU employer has no organization whatsoever specific to state employees, there are no by-laws or constitution that is specific to state employees, and the extent of UPSEU’s contact with state employees is limited to soliciting cards. (Tr. P. 99, 100) UPSEU’s own witness, Regional Director Suraci, makes it quite clear that UPSEU is not eligible to file a petition on behalf of state employees because it has never existed in state employment. The language of §5-270 states clearly and plainly that the Union must be in existence **in state employment for at least six**

months. There is no ambiguity in this sentence and it is not susceptible to various interpretations. It is clear that as a predicate for representing state employees, a Union must represent state employees for at least six months; this is the only reasonable interpretation of C.G.S. §5-275 and there can be no other way to read this statute.

When a statute is not susceptible to more than one interpretation, it is not necessary to look further for interpretive guidance. Thomas v. Department of Developmental Services, 297 Conn. 391 999 A.2d 682 (2010) It is well-established that when interpreting statutory construction, "*If the language of a statute is plain and unambiguous, we need look no further than the words themselves because we assume the language expresses the legislature's intent.*" Frillici v. Westport, 231 Conn 418 650 A.2d 557 (1994)

In the instant case, the last sentence of C.G.S. §5-275(a)(1) is plain and unambiguous. The SBLR need look no further than the last sentence of the statute and compare the testimony and the evidence on the record regarding UPSEU's experience in state employment. As previously stated, Suraci's testimony is that UPSEU has never represented state employees for wages, hours and working conditions. UPSEU has never negotiated a collective bargaining agreement for state employees or provided any form of collective bargaining service to state employees. UPSEU does not meet the statutory requirement §5-275, because it has no experience whatsoever representing state employees and has not been "*in existence in state*



employment for at least six months." The SBLR has no choice but to apply the plain and unambiguous language of C.G.S. §5-275 and dismiss the UPSEU election petition.

V. **ARGUMENT II:**

The contract bar rule prevents UPSEU from filing the representation petition, which is the subject matter of this case. Connecticut General Statute §5-275 states in relevant part, "*No election shall be directed by the Board during the term of a written collective bargaining agreement, except for good cause.*" UPSEU filed its petition on August 30, 2011, and according to previous cited testimony, the Union membership's vote approved the SEBAC 2011 agreement, along with the new unit agreement on August 16, 2011. The successor agreement was executed by the parties on August 22, 2011 and does not expire until 2016 (Exhibit 33). Clearly, UPSEU's petition is premature and therefore is not valid, because it was filed within days after the commencement of the new Collective Bargaining Agreement.

The SBLR's 5-273-10(b) regulation states that, "*an election petition is considered timely if it is filed between August 1st and August 31st of the year prior to the expiration date of the collective bargaining agreement.*" In the instant case, UPSEU filed a petition after the new agreement was in effect. By filing the petition, it is ignoring the contract bar rule and the fact that there is a new agreement between the parties.



It is hard to believe that UPSEU was unaware that the parties were negotiating a successor collective bargaining agreement, as well as negotiating what would become SEBAC 2011 agreement. This very public knowledge is evidenced by daily reports in the electronic and print media of the ongoing negotiations between the entire incumbent Unions and the State. It was no secret that the Union was voting on a contract on August 16, 2011, and there is no evidence that this election was held in secret. Before filing a petition on August 30, UPSEU surely knew that a vote had taken place and that a new collective bargaining agreement was in effect between the parties. Therefore, its petition filing is nothing more than a bold-face attempt to negate the statute and ignore the State regulation. The contract bar rule under SBLR case law is non-statutory and is not authorized by State regulation; the three-year contract bar rule has been created by Labor Board holdings and dicta.

The SBLR holds that the contract bar rule serves two purposes, one is to promote labor stability while ensuring that employees are provided with "*periodic opportunity to express their desires about their choice of bargaining unit representatives.*" City of Bridgeport, Decision No. 3338 (1995)

The City of Bridgeport facts are very different than those of the instant case. In City of Bridgeport, legal proceedings and stalled negotiations created a situation where union members did not have an opportunity to vote on a bargaining representative for four years and there was

no opportunity in the foreseeable future, therefore, there was no contract in place. In the instant case, where the Union's bargaining unit members voted on the new unit agreement as well as the SEBAC 2011 agreement in August 2011, there was an opportunity by the rank and file to vote no and turn the successor agreement down. In comparison with the City of Bridgeport, there was a successor agreement in place in the instant case. The proposed unit agreement contained a recognition clause, as well as a duration clause. Voters were well aware that the new collective bargaining agreement would not expire until 2016; this essentially created a new contract bar. In the instant situation Union members had the opportunity to vote no on the agreement and refuse the new duration clause included in the unit collective bargaining agreement. The SEBAC agreement and unit agreement were agreed to and approved by the employer and the Union, and also the Connecticut General Assembly.

Despite UPSEU's theory that bargaining unit members were not aware of the new contract bar, it is patently clear the Union members were given every opportunity to review the proposed collective bargaining agreement and certainly had their say by way of the August 2011 vote. The recognition clause named the incumbent Union and the duration clause stated the term of the contract. UPSEU's conspiracy theory that bargaining unit members were not aware of what they were voting on is contradicted by the evidence and testimony at the hearings. The Union members voted only after having had the opportunity to review the proposed SEBAC



2011 agreement, and the Union agreement contained a recognition clause, and stated clearly the duration of the agreement.

At the hearing, UPSEU called Union President Satti as its witness. Satti testified that he and the other bargaining unit members were well aware that the duration of the agreement that was voted on August 16, 2011 was five years, and that the agreement was approved by a membership majority. (Tx. P. 498-502) UPSEU offered other witnesses who also testified that in their respective units, the rank and file were informed of the change in the duration clause prior to voting and approving their respective unit agreements. UPSEU's own witness testimony makes it clear that everyone was cognizant that the duration clause of the successor collective bargaining agreement would change. Therefore, UPSEU's claim that rank and file members were not aware of the duration of the contract is an empty shell of a theory.

The Union asks the SBLR to take administrative note that in recent years there have been other modifications to the SEBAC agreement, as well as individual unit agreements, and that this practice is relatively common and necessary.

Finally, UPSEU may argue to the SBLR that there is "*good cause*" to order an election in the instant case. At the hearing in this matter, UPSEU argued that it will be 2015 before there is a window for it to file to represent the Union. While the SBLR has concluded that employees have a statutory right to choose their representative, it is also holds that it is just as important to



have stable relations between employee groups and employers. West Hartford Board of Education, Case No. ME-2539, Decision No. 1183 (December 6, 1973) The SBLR traditionally refuses to set specific rigid limits regarding a contract bar rule and prefers to look at the issue on a case by case basis. Town of Manchester, Case No. ME-1675, Decision No. 813 (June 27, 1968); City of Shelton, Case No. ME-2263, Decision No. 1065 (May 5, 1972)

In the instant case the SBLR must look at the particular facts. Due to the very serious economic downturn of 2012, the State and SEBAC entered into negotiations regarding a new SEBAC agreement which would change the parameters of State employee health insurance. As is customary, individual units, including the Union, entered into negotiations and reached an agreement regarding a successor contract with a new duration date. The very public knowledge of these negotiations was reported in newspapers and newscasts throughout the summer of 2011. The negotiations led to agreements which were ratified by the Union membership. Union members had the opportunity to review the new individual agreement, and were plainly aware of the terms of the agreement, including the recognition and duration clauses. It is only after the new agreement is ratified that UPSEU filed a petition for an election. If the SBLR were to give validity to UPSEU's petition, filed after a new agreement was completed, it would cause substantial disruption between the Union and the employer. The underlying purpose of the Act is to stabilize a labor relationship between the parties, allowing UPSEU the opportunity for an



election effectively would cause instability between the parties. Not only should the UPSEU petition be dismissed because UPSEU is not a valid Union to represent State employees, but also because UPSEU's petition violates the contract bar rule. Finally, allowing UPSEU's petition to go forward would create instability between the employer and the Union.

The SBLR has no alternative but to dismiss the UPSEU petition. The bargaining unit members were well aware of the contents of the proposed contract when they overwhelmingly ratified it and the SEBAC agreement. There is a legitimate contract bar to UPSEU's petition.

VI. ARGUMENT 3:

UPSEU's primary theory of its case is that there is good cause for the SBLR to order an election because Attachment H was not seen by Union members before they voted in August 2011. The fact that Attachment H was not a part of the agreement reviewed by Union members is a given, however, it does not create the kind of conspiracy theory or element of fraud which UPSEU suggests throughout the hearings. The fact that Attachment H was created after the Union members voted is really neither here nor there, because according to witnesses, the SEBAC Union leadership discussed the contents of Attachment H and were well aware of it as early as March or April of 2011, prior to the Union vote. (Tx. P. 257, 258, 508, 509)

Throughout the course of the hearing, UPSEU's focus was on the last paragraph of Attachment H which states, "*Effective on or after July 1, 2011, the contract bar for purpose of*



any constituent Union of SEBAC accepting the contract extension or renewal in accordance with Appendix A of this agreement shall be computed solely from the expiration date of any such extension or renewal.” Essentially this last paragraph codifies the contract bar rule. UPSEU spent a great deal of time at the hearings in this matter attempting to convince the SBLR that Attachment H was something inferior, created by the incumbent Union leadership and hidden from the members. It is stipulated that Attachment H was not created until after Union membership voted, nonetheless, Attachment H is simply a recitation of the well-established contract bar doctrine and the SEBAC leadership was well aware that there would be an Attachment H.

Attachment H was part of the packet that went to the Legislature, including the individual unit contracts and the SEBAC 2011 agreement, which the Legislature approved by its inaction. The SEBAC 2011 agreement with its appendices, including Attachment H as well as the individual bargaining contracts, had a recognition clause and new duration date. Appendix H, as with all other appendices attached to the SEBAC 2011 agreement became effective without a specific hearing or vote.

The State Employees Relations Act is, of course, a state statute. The Legislature has the right to modify, limit or broaden the scope of any public sector statute in Connecticut. Collective bargaining rights are created by the Legislature and may be restricted by the Legislature. State of



Connecticut (DAS), Decision No. 3427 (1996) Aff'd. Connecticut State Employees Association v. State of Connecticut, et al, Judicial District of Hartford/New Britain at New Britain, Docket No.: HHD-CV96 00564307 (July 18, 1997) Just as the Legislature has the absolute right to modify the State Employees Relations Act, the Connecticut General Assembly also has the inherent right to accept and act upon any agreement, as it did with the SEBAC 2011 agreement, including its Appendices.

UPSEU is asking that the SBLR invalidate Attachment H when the SBLR does not have the jurisdiction to do so. In fact, the SBLR does not have the power to consider the validity of the supercedence of any items that were part of the SEBAC 2011 agreement. Essentially what UPSEU is requesting for relief in this case, and argued for over the days of hearing, is that the SBLR negate a portion of the SEBAC 2011 agreement negotiated between the parties and overturn the will of the Connecticut General Assembly. The SBLR is well aware that it cannot invalidate Appendix H and for this reason the UPSEU petition must be dismissed.

VII. CONCLUSION:


For all the reasons stated herein, the SBLR should dismiss UPSEU's representation petition filed on August 30, 2011. UPSEU does not have the statutory standing to represent State employees. Furthermore, there is a legitimate contract bar to the UPSEU petition. Finally,



Attachment H, negotiated by the parties and approved by the State Legislature, cannot be negated by the SBLR.

**JUDICIAL PROFESSIONAL EMPLOYEES,
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CERTIFICATION

This is to certify that a copy of the foregoing Brief was mailed April 17, 2012 to the following:

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